IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.408 OF 2006

...

M/s.Angel Infin Pvt.Ltd. ...Petitioners

v/s.

M/s.Echjay Industries Ltd. ...Respondents

...

Mr.H.Thakkar, Sr.Advocate with Mr.Umesh Shetty and Ms.Yamini Chandran i/b M/s Umesh Shetty & Co. for the Petitioners.

Mr.D.J.Khambatta, Sr.Advocate with Mr.J.P.Sen and Ms.Sita Kapadia i/b Federal & Rashmikant for the Respondents.

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CORAM: D.K.DESHMUKH, J.

DATED: 17TH JANUARY,2007

JUDGMENT:

1. Petition has been filed under Section 34 of the Arbitration & Conciliation Act challenging the award dated 16-6-2006 made by the learned sole arbitrator partly allowing the claim made by the Respondents. The Respondents were the claimants before the arbitrator and the Petitioners were the Respondents. It was the claimants' case before the learned arbitrator that they had advanced loan of Rs.1.5 crore to the Petitioners in two branches of Rs.50 lakh and Rs.1 crore under an agreement contained in two documents dated 6th April, 1998 and dated 29th May, 1998. While the document dated 6th April, 1998 provided for interest at the rate of 30% p.a. The agreement dated 29th May, 1998 provided for payment of interest at the rate of 27% p.a. In fact the Respondents claimed interest only at the rate of 27% p.a. on the entire loan of Rs.1.5 crore before the learned arbitrator. The loan advanced initially for a period of three months was to stand automatically extended for a further period of one month in each case, unless the Respondents give a notice to the

Petitioners requiring them to pay the said loan on expiry of the notice period.

2. The Petitioners did not repay the said amount within the period stipulated in the said documents nor did they make any payment towards interest due thereunder. It was the Respondents' case before the learned arbitrator that thereafter in a meeting held in September, 1998, the Petitioners sought deferment of the loan and interest and promised to make lump sum payments which they requested be appropriated first towards principal and then towards interest and that the Respondents agreed to this.

3. Subsequently, the Petitioners repaid the principal amount of Rs.1.5 crore during the period from 8th February, 1999 to 15th February, 2000. No payments were however made by the Petitioners during the said period or thereafter towards the interest due. By their letter dated 27th March, 2000 the Respondents raised a debit note of even date on the Petitioners debiting their account to the extent of Rs.50,85,985/- being the interest payable at the rate of 27% p.a. upto that date. The Petitioners did not make payment of interest demanded by the Respondent.

The dispute thus arose between the parties in relation to the liability of the Petitioners to pay interest. By letter dated 12th December, 2002 the Respondents invoked the arbitration clause contained in the loan documents and the disputes between the parties were referred to Mr.Jitendra Shah, the named arbitrator in the Arbitration Clause.

4. The said arbitrator made the award dated 6-2-2003 in favour of the Respondents. It was challenged by the Petitioners in Arbitration Petition No.240 of 2003 before this court. By order dated 15th July, 2003 the said award was set aside by consent of the parties and the disputes between the parties were referred to Hon'ble Mr.Justice A.B. Palkar (Retd.). The said order provided that the date of reference would be the date on which the matter was first referred to the Arbitrator whose award was set aside i.e. 12th December, 2002.

5. The Respondents thereafter filed the statement of claim for an amount of Rs.1,06,53,871/- and further interest. The Petitioners disputed their liability to pay the amount claimed by the Respondents. In the reply filed by the Petitioners three defences were

raised, (i) because of an oral agreement reached between the parties, the Respondents had waived their claim to interest; (ii) that the claim was almost entirely barred by law of limitation; (iii) that the claim was in part in the nature of interest upon interest and therefore that claim cannot be awarded.

6. The Respondents/claimants examined their Managing Director as the witness in support of their claim. The Petitioners did not lead any oral evidence.

7. The learned arbitrator after considering the material on record made the award. The learned arbitrator partially allowed the Respondents' claim to the extent of Rs.37,44,492/- and granted further interest thereon at the rate of 21% p.a. from 15-2-2000 till the date of the Award and further interest at the rate of 18% p.a. till the payment or realisation. The learned arbitrator also awarded the costs to the Respondents. The learned arbitrator held that two documents dated 6th April, 1998 and 29th May, 1998 constitute separate causes of action and that the Respondents' claim for interest under the first agreement dated 6th April, 1998 was barred by limitation. He further held in respect of the

amount of Rs.1 crore advanced under the document dated 29th May, 1998 that the Respondents' claim for interest due thereon was within limitation in as much as, time in respect thereof had been extended by part payment made by the Petitioners towards their debts, the last such payment having been made by cheque on 15-2-2000. The interest to which the Respondent was entitled was quantified at Rs.37,44,492/- upto 15th February, 2000 calculated on reducing balance basis at the agreed rate of simple interest at 27% per annum. Further simple interest was awarded thereon from 15-2-2000 at the rate of 21% p.a. till the date of the award and at the rate of 18% p.a. from the date of the Award till realisation. The Award proceeds on the basis that the learned arbitrator would have been entitled even for these periods to award interest at the agreed rate i.e. 27%, but was, in exercise of his discretion awarding interest at reduced rates. It is this award which is challenged in the present petition.

8. The Petitioners have challenged the award principally on two grounds, (i) that the interest accrued prior to 12-12-1999 is barred by the law of limitation and the Article of the Limitation Act

applicable is Article 25; (ii) According to the Petitioners under the provisions of Section 3 of Interest Act, no court or tribunal can grant interest on interest and Section 31(7) of the Arbitration Act cannot override the substantive provisions of Section 3 of the Interest Act.

9. The learned Counsel appearing for the Petitioners submits that it is agreed between the parties that 12-12-2002 is the date of commencement of the arbitration and that is the relevant date for the purposes of computation of limitation. It is also agreed between the parties and recorded by the learned Arbitrator that Article 25 of the Limitation Act is the article applicable to the facts of the case. The said Article reads as under:

25.	**For money payable for Interest upon money due From the Defendant to the Plaintiff.**	**Three years**	**When the interest becomes due.**

The agreement provides that the loan shall be for a period of three months and shall be returned at the end of one quarter. The loan shall be automatically

extended for a further period of one month and thereafter similar further period of one month till certain events happen, which events have not happened. It is also provided in the agreement that the loan shall carry interest at the rate of 27% per annum payable at the end of first quarter and thereafter at the end of each month.

. It is submitted by the Petitioners that the entire loan has been admittedly repaid by instalments between 10-6-1999 and 16-2-2000 as set out in the Statement of claim. It is also admitted that no interest whatsoever has been paid. It is also admitted that the last instalment of principal amount has been paid on 16-2-2000. In view of the Article 25 of the Limitation Act, interest on loan of Rs.1.00 crore advanced on 29-5-1998 became payable at the end of one quarter, i.e. on 29-8-1998 and thereafter at the end of every month, i.e. on 29-9-1999, on 29-10-1999, on 29-11-1999, on 29-12-1999 and so on, on 29th of every succeeding month. Since the arbitration has commenced on 12-12-2002, all interest accrued and due prior to 13-12-1999 has become barred by limitation. Only interest which accrued from 13-12-1999 to 15-2-2000 is within limitation. After

15-2-2000, no interest could become payable because the entire loan has been repaid. The Respondents did claim, falsely and without any basis, interest from 16-2-2000 to 31-12-2003 but they could not sustain it and the learned Arbitrator has rejected that part of the claim. According to the Petitioners, only a sum of Rs.1,13,177/- being the interest that is accrued from 13-12-1999 to 15-2-2000 is within limitation. No more amounts could have been claimed or awarded on account of interest.

. It is next submitted by the learned Counsel for the Petitioners that the learned Arbitrator having accepted the position that it is Article 25 of the Limitation Act, which applies to the facts of the case, has fallen in grave and serious error in upholding the contention on behalf of the Respondents. The learned Arbitrator has held that under Section 19 of the Limitation Act, the period for recovery of loan gets extended because of repayment in writing signed by or on behalf of the debtor and that the extension would apply not only to the principal amount but also to the interest then due. The learned Arbitrator therefore concluded that the interest on the loan of 29th May, 1998 is within

limitation because the last repayment of the principal was made by cheque dated 15-2-2000. According to the learned Arbitrator, the limitation period gets extended by three years from 15-2-2000 to 14-2-2003 and the arbitration having commenced on 12-12-2002, the recovery of interest on the said second loan is completely within the period of limitation. The learned arbitrator further went ahead and held that the extension of period of limitation as per law would apply not only to principal sum of the loan but even to the interest due thereon on the date when the period gets extended. According to the learned Arbitrator even if the entire repayment of the principal sum is made, the extension of limitation would apply if it is in accordance with Section 19 of the Limitation Act to the balance then due, which may be only the interest.

. The aforesaid legal propositions laid down by the learned Arbitrator in the impugned award are not only erroneous but contrary to the statutory law contained in the Limitation Act, 1963.

10. The learned Counsel for the Petitioners further submits that for the purpose of extending the period

of limitation, the part payment should be on account of a debt. The word debt is not defined in the Act but as observed by the Hon'ble Supreme Court in paragraph 22 of their Judgment in the case of Kesoram Industries v/s. The Commissioner of Wealth Tax, reported in AIR 1966, SC page 1370, the expression debt may take colour from the provisions of the concerned Act. The relevant portion of paragraph 22 reads as under:-

"We have briefly noticed the judgments cited at the Bar. There is no conflict of the definition of the word "debt". All the decisions agree that the meaning of expression "debt" may take colour from the provisions of the concerned Act. It may have different shades of meaning."

. Applying the above observations of the Apex Court, one has to look to Section 19 of the Act and read the expression "debt" appearing therein along with the articles in the Schedule to the Limitation Act. The Articles provide for different periods of limitation for different types of debts. They also provide different dates from which the period of limitation begins to run. A glance at the said Schedule would

show that there are large variety of debts as for example, for Seamen's Wages, for price of Goods sold and supplied, for price of Lodging, for hire of Animals or Vehicles or price of Trees or growing Crops, for price of work done, for money lent under an agreement, for money lent without an agreement, for money received by the Defendants for Plaintiffs use, for interest on monies lent, for amounts due under Bills of Exchange, Promissory Notes etc. This will show that Article 25 refers to only the debt of interest, while Article 19 refers to the debt of loan. Since there are various types of debts provided under the schedule with different periods of limitation and different dates from which the limitation begins to run, the Parliament in section 19 of the said Limitation Act, 1963 has advisedly used the generic expression "debt". This debt may be of one type or another type, but the payment on account of one type of debt cannot extend the period of limitation for another type of debt. Debt could be either for principal loan amount or it could be for interest. The part payment of debt for principal loan amount cannot extend the period of limitation for the debt of interest. The plain meaning of the expression "debt" does not include the amount of loan

and the amount of interest both, more so, when the Articles in the Schedule to the Limitation Act provide for various types of debt and different dates of commencement. The entire argument of the Respondents upheld by the learned Arbitrator is based on this wrong and erroneous interpretation of the provisions of Section 19 of the Limitation Act, and the same cannot be upheld.

11. It is submitted by the Petitioners that as far as the present case is concerned, the argument provides for different periods for the repayment of loan and for payment of interest. The observations of the learned Arbitrator in para 41 of the Award that the extension of period of limitation would apply not only to the principal sum but also the interest due thereon goes contrary to the literal meanings of the words "loan" and "interest". The attempt on the part of the learned Arbitrator to interpret Section 19 of the Limitation Act in the manner he has done, is also contrary to law laid down by the Apex Court in the latest Judgment delivered on 6th December, 2006 in the case of Raghunath Rai Bareja v/s. Punjab National Bank that where statutory provision is plain and unambiguous, the

Court shall not interpret it in a different manner. Where the language of the statute is unambiguous, the question of pressing into service any rules of interpretation other than the literal rule is not permissible. It is only where the provision of the statute is ambiguous, the Court can depart from a literal or strict construction. In the above case, the Apex Court has referred to catana of cases decided earlier and made it amply clear that the rules of interpretation other than the literal rule would come into play only if there is any doubt with regard to the express language used or if the plain meaning would lead to an absurdity. Where the words are unequivocal, there is no scope for importing any rule of interpretation.

. In view of the authoritative of the pronouncements of the Apex Court from time to time which are summarised in the latest Judgment referred to hereinabove, the attempt on the part of the Respondents to go into the history of Section 19 and to refer to the Report of the Select Committee for the amendments in the earlier law are not justified. Similarly, the reasoning of the learned Arbitrator as set out in paragraphs 39, 40 and 41 of his Award is

also contrary to law, as laid down by the Apex Court and cannot be sustained.

12. The interpretation and reasoning, if accepted would lead to some absurd results as under:-

(a) Articles 25, which provides for limitation for interest becomes totally superfluous and redundant. If part payment of principal can extend the period of limitation for claim of interest, then where is the need for a separate and independent Article for interest like Article 25? Why would the Parliament have thought of an independent Article for interest at all? No difficulty would at all arise if Article 25 is deleted. Is such interpretation justified? No. It cannot be assumed that the Parliament has committed a mistake or has passed the law, which is redundant.

(b) Article 25 provides that the limitation for interest would begin to run from the time when interest becomes due. However, the learned Arbitrator has calculated and awarded interest from 29-5-1998 i.e. the date when loan was advanced. This is long before even the first interest became

due, which is at the end of first quarter i.e. 29-8-1998 and subsequent interest became due still later at the end of each subsequent month. This would also amount to substituting the words in a Statute i.e. column 3 of Article 25 of Limitation Act, 1963, which is not permissible in law.

(c) Though Article 19 provides limitation only for loan, the learned Arbitrator has taken it to mean loan and interest both. This amount to doing violation to the language of the Statute.

(d) The learned Arbitrator has chosen to ignore the fact that there is no article, which provides for limitation for "Debt". He has however first taken "debt" to mean and include the principal amount of loan with interest, applied Article 19 of the Schedule and pressed into service the provisions of Section 19 of the Limitation Act. The result is interest transforms itself, by some magic, first into principal amount attracting Article 19 and then getting the benefit of extension under Section 19 of the Limitation Act.

13. The learned Counsel for the Petitioners submits

that it may not be inappropriate to point out that under Section 34 of the Arbitration, 1996, the illegal part of the Award cannot be severed from legal part of the Award. Therefore, the part of the Award for the amount which is within limitation i.e., interest accrued between 13-12-1999 and 15-2-2000 amounting to Rs.1,13,177/- only cannot be separated and severed from the part of the Award for amounts which are beyond limitation, i.e. interest accrued between 29-5-1998 and 12-12-1999. Therefore, the entire Award is liable to be set aside.

14. The learned Counsel for the Respondents, on the other hand, submits that the expression "debt" in Section 19 ought to be construed to include both principal and interest arising out of the same transaction and that payment towards either would extend limitation qua both. It is submitted that this construction is in accord both with the plain and ordinary meaning of the Section in general and the word "debt" in particular. The Hon'ble Supreme Court, while considering the expression "debt", has held that while the expression may have shades of meaning, the following definition is "unanimously accepted": "A debt is a sum of money which is now

payable or will become payable in future by reason of a present obligation debitum in praesenti, solvendum in futuro". So defined, the expression is clearly broad enough to include both principal and interest arising out of the same transaction.

. The learned Counsel further submits that the principal amount and the interest amount cannot be termed as separate debts. Taken to its logical conclusion, such a contention would mean that each installment of interest is a separate debt. In other words, one loan would be divided into numerous separate debts. Thus, a part payment towards one installment of interest would not extend limitation for any other installment even of interest. This would lead to an absurd result.

. If as set out hereinabove, principal and interest arising out of the same transaction constitutes a single "debt", then payment towards either would extend limitation for both under Section 19 of the Limitation Act. The Hon’ble Delhi High Court has in fact so held in its judgment in Rajesh Kumari v/s. Prem Chand Jain.

. In the submission of the learned Counsel for the Respondents, the fact that the cause of action for recovery of a loan and the interest accrued thereupon are independent, and the starting points for limitation to recover the two amounts are different, does not in any way affect this position. Article 21 of the Limitation Act provides that for money lent under an Agreement that it shall be payable on demand, the period of limitation shall be three years from when the loan is made. Article 25 provides in respect of an action for interest that the period of limitation shall be three years from when the interest becomes due. There is, however, nothing untoward in Section 19 subsuming both causes of action being subsumed in the expression "debt" and providing for a common fresh period of limitation being computed from the time when part payment is made. While Articles 21 and 25 provide for the starting points of limitation for the recovery of a loan payable on demand and interest respectively, part payment of either would be payment towards the debt (which has been construed to include both principal and interest) which would then furnish a fresh period of limitation (3 years in both cases) from the date of such payment. This would be evident

from a plain reading of Section 19 which provides that "where payment on account of a debt... is made before the expiration of the prescribed period", then "a fresh period of limitation shall be computed from the time when the payment was made." Section 2(j) defines both "prescribed period" and "period of limitation". "Prescribed period" has been defined to mean "the period of limitation computed in accordance with the provisions of this Act" while "period of limitation" has been defined as "the period of limitation prescribed for any suit, appeal or application by the Schedule." The "period of limitation" is set out in Column 2 of the Schedule to the Limitation Act. Column 3 of the Schedule sets out the time from which the period begins to run. Section 19 provides that, in the case of a part payment, these periods of limitation will all be computed from a common starting point viz. from the time when the part payment was made. If a payment is made either towards principal or interest within the "prescribed period" for both, then such payment being a payment towards a "debt" would furnish a fresh period of limitation (3 years as evident from the second column titled "period of limitation" of Articles 21 and 25) in respect of both principal and

interest. Such an interpretation does not "defeat" the provisions of Column 3 of the Schedule- indeed it is in consonance with the legislative intent reposed in Section 19 that in the case of part payments, there will be a common starting point.

. The requirement of Section 19 that the part payment be made "before the expiration of the prescribed period...." is only a recognition of the well settled principle that once time has expired, the case of action cannot be revived by a subsequent happening such as a part payment after the prescribed period of limitation has expired.

15. The learned Counsel for the Respondents further submits that the language of Section 19 is virtually identical in terms to the language of Section 20 of the Limitation Act, 1908 as amended in 1942. Prior to its amendment in 1942, Section 20 made a clear distinction between payments made towards principal and payments made towards interest and the effect of both. The Report of Select Committee was presented to the Council of State. The Report of the Select Committee was presented to the Council of State. The Report of the Select Committee on the proposed Bill

made it is clear that the object of amending Section 20 was, inter alia, to eliminate this distinction by using the expression "debt" which is a word of broader import which subsumes within itself both principal and interest.

The 1942 amendment substituted the existing Section 20(1) with a new Section 20(1) viz:

"Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, or by his duly authorised agent, a fresh period of limitation shall be computed from the time when the payment was made..."

The new Section 20(1) of the Limitation Act, 1908 is in para materia with Section 19 of the Limitation Act, 1963. The Schedule under the Limitation Act, 1908 also provided for different starting points for time beginning to run for principal and for interest. These Articles viz. Articles 57-63 are identical to Articles 19-25 of the Limitation Act, 1963. Notwithstanding this, the 1942 amendment consciously merged the different treatments to part payment of

principal and part payment of interest into one viz. part payment towards the debt.

. The Petitioners' contention that a payment which is appropriated towards principal would not extend limitation in respect of interest would restore the distinction between payments towards principal and interest which had been consciously eliminated by amendment. There is no warrant for this.

. In the present case, the language of Section 19 does not irresistibly or otherwise drive this Hon'ble Court to adopt the Petitioners' interpretation.

16. It is submitted by the Respondents that the aforesaid construction of Section 19 also accords with the requirements of justice and convenience. The construction canvassed by the Petitioners would have alarming and absurd results. Thus, e.g. if payments made in repayment of a bank loan are appropriated towards interest and not principal as indeed a bank would be fully entitled to do, the bank's claim for the principal would be barred after three years of the loan deposit such payments having been made. A bank would, in the above example, be

compelled to recall the loan and to file a suit, despite interest being serviced by the borrower in accordance with their agreement. It is precisely to avoid such an unjust and manifestly inconvenient result that the Legislature has advisedly used the expression "debt" in Section 19 rather than "principal" or "interest". According to the learned Counsel it cannot be said that the Learned Arbitrator's construction of Section 19 is manifestly wrong or suffers from any patent illegality. It is submitted that the finding in the Award that the Respondents' claim for interest on the advance of Rs.1 crore is within limitation is perfectly proper and in any event, does not suffer from any patent illegality which would require interference under Section 34 of the Arbitration and Conciliation Act, 1996.

17. So far as the first challenge to the award is concerned, the dispute between the parties is really whether the payment made by the Petitioners which was also appropriated by the Respondents towards principal would extend the period of limitation in view of the provisions of Section 19 of the Limitation Act. Section 19 of the Limitation Act

reads as under:-

> **19. Effect of payment on account of debt or of interest on legacy.- Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:**
>
> **Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgement of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.**

Perusal of the above provisions shows that the question to be considered is whether the term " a debt" used in the above provisions means principal or interest or it means principal and interest. The submission of the learned Counsel appearing for the Petitioners is that because the schedule of the Act

provides for a different starting point of limitation for recovery of the principal and for recovery of the amount due on account of interest the term "debt" should be read accordingly. According to the Respondents, on the other hand, the term "debt" used in Section 19 means both principal and interest and merely because starting point of limitation for instituting the suit for recovery of principal and for recovery of interest is different, the term "debt" used in Section 19 cannot be read only as principal or as interest. The learned Counsel appearing for the Petitioners is perfectly right in submitting that unless the court finds some ambiguity in the provisions of Section 19 the court will not be justified in referring to the history of the legislation to find out the correct meaning of the provisions. If the interpretation canvassed by the Petitioners of the term "debt" found in Section 19 is accepted, if the payment made by debtor is appropriated by the creditor towards interest only, and if the debtor does not make any payment towards principal for a period of three years from the date on which loan is made, the claim for principal gets time barred and if the claim for principal gets time barred, the creditor will also not be entitled to

claim interest. On the other hand, if the part repayment made by the debtor is appropriated by the creditor towards principal, the claim for interest may get time barred. Similarly, if the term "debt" is to be construed with reference to starting point of limitation laid down in the schedule, then the interest becoming due each month and the principal will constitute a separate debt and even when the payment is made expressly towards interest, the creditor will have to appropriate that amount towards interest becoming due each month. Otherwise, there would be danger of some part of the interest becoming time barred. But the fact remains that Section 19 uses the term " a debt" and the payment for extending the period of limitation has to be made before expiration of the prescribed period of limitation. Therefore, the period of limitation is relevant. Perusal of the schedule, however, shows that the schedule divides each entry in three parts; (i) description of the suit; (ii) period of limitation; and (iii) the time from which the period began to run. So far as the period of limitation is concerned, it is the same for recovery of interest as also for recovery of principal. Only starting point of limitation is different. It is, thus, clear that

it cannot be said that the meaning of the term "a debt" used in Section 19 is completely unambiguous, and therefore, in my opinion, to find out what would be the correct meaning to be assigned to the term "a debt", one has to take aid of external aids of construction. One of the recognised external aid of construction is the legislative history of the provision. Sub-section 1 of Section 20 of the Limitation Act, 1908, which is a para materia provision to Section 19 of the Limitation Act, 1963 before this amendment in the year 1942 read thus:-

> **"Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorised in this behalf, or where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made....**

. Perusal of the above quoted provision shows that Section 20 made a clear distinction between payment

made towards principal and payment made towards interest and provided for the effect of both. It appears that a draft Bill was submitted to the Select Committee. The report of the Select Committee on the proposed Bill made it clear that the object of amending Section 20 was to eliminate this distinction by using the expression "debt", which is the term of broader import and which includes both principal and interest. Statement of Objects and Reasons of amended Section 20 of the Limitation Act, 1908 reads as under:-

> **"We have found it necessary to redraft the Bill. The mere omission of the words 'as such' from section 20 of the Indian Limitation Act, 1908 would not abolish the distinction between payment of interest and part payment of principal. So long as the distinction remained it would be necessary for the creditor to appropriate an open payment either to principal or interest if he wished to save limitation."**

After its amendment in the year 1942, sub-section 1 of Section 20 reads as under:-

> **"Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, or by his duly authorised agent, a fresh period of limitation shall be computed from the time when the payment was made."**

A Comparison of sub-section 1 of Section 20 of the 1908 Limitation Act as amended in the year 1942 and the provisions of Section 19 of the Limitation Act, 1963 shows that the provisions are identical and therefore, the provisions of unamended Section 20 of Limitation Act, 1908 and the provisions of Section 20 after its amendment in the year 1942 becomes relevant to consider what is the meaning to be attached to the term "a debt" used in Section 19 of the Limitation Act, 1963. It, thus, becomes clear that initially Section 20 made a clear distinction, so far as extension of period of limitation is concerned, between the payment made towards principal and payment made towards interest. Perusal of the provisions of sub-section 1 of Section 20 of the Limitation Act, 1908, as amended in the year 1942,

shows that the distinction made between payment made towards interest and payment made towards principal was done away with. It is clear that the legislature wanted to extend the benefit of extension period of limitation when payment is made by the debtor to a creditor irrespective of whether payment is made towards principal or payment is made towards interest. But only requirement is that the date of which the part payment is made, both principal and interest should be due. In my opinion, accepting the construction suggested by the Petitioner of the term "debt" found in Section 19 of the Limitation Act would nullify the purpose for which the legislature effected the amendment in the provisions of sub-section 1 of Section 20 which is the provision identical to the provisions of Section 19 of the Limitation Act. In any case, in my opinion, the construction placed by the learned arbitrator on the provisions of Section 19 cannot be said to lead to injustice, on the contrary it leads to justice and convenience, and therefore, in my opinion, so far as the award made by the learned arbitrator in this regard is concerned, it cannot be disturbed.

18. So far as the second challenge is concerned, the

learned Counsel appearing for the Petitioners submits that the learned arbitrator in exercise of his power under Section 31(7) of the Arbitration Act granted not only interest on interest, but also further interest on interest. It is submitted that from the perusal of provisions of Section 31(7)(a) of the Arbitration Act it is clear that the power to grant interest under this Section can be exercised by the learned Arbitrator only if there is no agreement between the parties. if there is an agreement for payment of interest, then the learned Arbitrator cannot exercise these powers but has to go by what the parties have agreed. In the submission of the learned Counsel, the present agreement provides only for interest on principal amount of loan, there is no provision for interest on interest in the agreement dated 29-5-1998 and the learned Arbitrator has also said in para 38 of the Award that the present was a case of simple interest. If that is so, the learned Arbitrator could not have granted interest on interest, which he has done by his Award. Admittedly, the claim is only for recovery of interest. Having held so, the learned arbitrator could not have granted interest on the said amount of interest from 15-2-2000 till the date of the Award

and further interest on the said amount of interest of Rs.37,44,492/- from the date of the Award till realisation. The award of interest on interest is not only against the contract between the parties, but the same is also in teeth of the provisions of Section 3(3)(c) of the Interest Act, 1978. The argument that a Court cannot award interest on interest under the provisions of Section 3(3)(c) of the Interest Act, but however the Arbitral Tribunal by reason of the power conferred under Section 31(7) of the Arbitration Act, 1996 can do so is rather strange. Anyway, if it is against the contract, it is not sustainable and no argument has been advanced to suggest that the powers of the Arbitrator under section 31(&) can override the agreement between the parties.

. It is also submitted by the learned Counsel that as far as Section 31(7) of the Arbitration Act is concerned, it is a procedural Section which confers powers on the Arbitrator. However, it does not confer any right on the creditor to claim interest on interest. The Petitioners submit that Section 31(7) is pari materia with Section 34 of the CPC, which has been held to be a procedural section by the Hon'ble

Supreme Court in the case of Central Bank of India v/s. Ravindra and Ors. reported in (2002) 1 SCC 367. It is well settled that procedural law cannot override the substantive law which is contained in Section 3 of the Interest Act. The Award of interest under the procedural law is not in accordance with but is contrary to the substantive law contained in Interest Act and the same is in violation of Section 28(a) of the Arbitration Act. In the submission of the Petitioners, therefore, the same is liable to be set aside.

19. On the other hand, in so far as the reliance placed on the provisions of Section 3(i) of the Interest Act is concerned, the Respondents submit that Section 3(1) is however qualified by Section 4(1) of the said Act which provides that "notwithstanding anything contained in Section 3, interest shall be payable in all cases in which it is payable by virtue of any enactment or other rule of law of usage having the force of law." The learned Arbitrator has in the impugned Award relied on two grounds in awarding interest to the Respondents, both of which would fall within the exception carved out in Section 4(1).

. The learned Arbitrator has relied on the settled position that interest may be awarded by an Arbitrator as compensation for deprivation of the use of money by delayed payment. The Petitioners have, by their default, prevented the Respondents from receiving and enjoying the benefit of the interest payable in respect of the said loan. The Respondents would be fully compensated for the Petitioners' breach only if they are paid interest on the amounts so withheld and of which they would otherwise have had the benefit.

. Alternatively, as held by the Hon'ble Supreme Court of India, once a claim (even for interest) is made to an arbitrator, such claim gets crystallised and becomes the principal. In such a case, Section 3 of the Interest Act, 1978 would not constitute any bar.

. Secondly, the learned Arbitrator also relied on Section 31(7)(a) of the Arbitration and Conciliation Act, 1996 which provides that an Arbitrator may award interest, at such rate as he deems reasonable, on the sum for which the Award is made for the whole or any

part of the period between the date on which the cause of action arose and the date on which the Award is made. This provision has been construed substantively by two Division Benches of this Court rather than as merely procedural and as conferring on the Arbitrator the power to grant interest from the date on which money becomes due or refundable. In Susaka Pvt.ltd. v/s. Union of India, a Division Bench of this Court upheld the power of an Arbitrator to award pre-reference interest from the date on which the cause of action arose on an award for damages. The Division Bench relied on the plenary power conferred by Section 31(7).

. Section 31(7) makes a significant and marked departure from the provisions of Section 34 of the Code of Civil Procedure, 1908. Whereas Section 34 of the CPC uses the expression "principal sum adjudged" upon which alone a court can award interest. Section 31(7) of the Arbitration Act empowers Arbitrators to award pre-reference interest on "whole or any part of the money" i.e. the sum of money awarded by way of interest. The judgment of the Hon’ble Supreme Court in Central Bank of India v/s. Ravindra sets out Section 34 of the CPC prior to its amendment in 1956.

These provisions show that prior to 1956, post decretal interest could be given on "the aggregate sum so adjudged". Whereas post 1956 this was amended to only interest on "such principal sum". The interpretation of Section 31(7) that subserves the grant of the wide power on Arbitrators would be in consonance with the policy of the law to encourage reference of civil disputes to arbitration rather than their adjudication by civil courts. Being a subsequent special Act, Section 31(7) of the Arbitration Act, would override Section 3 of the Interest Act, 1978 in any event.

. It is submitted that the Respondents' claim for interest on a reducing balance on the advance of Rs.1 crore, became crystallized on 15th February, 2000. The Respondents became entitled to interest atleast from the said date. The learned Arbitrator, in awarding interest from the said date committed no error of law or justice.

20. Now, so far as the first submission of the Petitioners that because in the agreement between the parties the parties have agreed for payment of interest on the amount of principal, the provisions

of sub-section 7 of Section 31 of the Arbitration Act will not come into play is concerned, in my opinion, the submission has no substance. Sub-section 7 of Section 31 of the Arbitration Act reads as under:-

> **31(7) (a) Unless otherwise agreed by the parties, where and insofar as an arbitral award is for the payment of money, the arbitral Tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.**
>
> **(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.**

21. It is clear from the perusal of sub-section 7 of Section 31 quoted above that the provisions operate unless there is an agreement to the contrary between

the parties. Absence of agreement between the parties for charging of interest on interest will not prevent Section 31(7) of the Arbitration Act to operate. To oust the operation of Section 31(7) of the Arbitration Act, a positive agreement to the contrary to what is contained in Section 31(7) will have to be pointed out. It is nobody's case that there is a positive agreement between the parties providing that interest shall not be charged on the amount of interest and therefore, the powers conferred by Section 31(7) of the Arbitration Act on the Arbitrator were available to the sole arbitrator who made the award. The learned Counsel appearing for the Petitioners relies on the provisions of Section 3 of the Interest Act to claim that awarding interest on interest by the learned arbitrator is contrary to the provisions of Section 3(3)(c) of the Interest Act. Section 3 of the Interest Act reads as under:-

> **3. Power of court to allow interest.-(1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may,**

if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,-

(a) If the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings;

Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings interest shall not be allowed under this section for the period

after such repayment.

(2) Where, in any such proceedings as are mentioned in sub-section (1)-

(a) judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and

(b) the sum represents or includes damages in respect of personal injuries to the plaintiff or any other person, or in respect of a person's death,

then, the power conferred by that sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the court considers appropriate for the whole or part of the period from the date mentioned in the notice to the date of institution of the proceedings, unless the court is satisfied that there are special reasons why no interest should be given in respect of those damages.

(3) Nothing in this section,-

(a) shall apply in relation to-

(i) any debt or damages upon which interest is payable as of right, by virtue of any agreement; or

(ii) any debt or damages upon which payment of interest is barred, by virtue of an express agreement;

(b) shall affect-

(i) the compensation recoverable for the dishonour of a bill of exchange, promissory note or cheque, as defined in the Negotiable Instruments Act, 1881 (26 of 1881); or

(ii) the provisions of rule 2 of Order II of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908);

(c) shall empower the court to award interest upon interest.

22. Perusal of the above quoted provisions shows that it is sub-section 1 of Section 3 which confers power on the court to pass a decree for interest. Sub-section 3(c) clarifies that the power conferred by Section 3 on a court to award interest does not empower the court to award interest on interest. Thus, this provision does not lay down a blanket proposition that no court has power to award interest on interest. The law incorporated in this provision is that Section 3 of the Interest Act does not empower the court to award interest on interest. In other words, the provision does not incorporate a negative mandate that no court can award interest on interest. The only law incorporated in this provisions is that Section 3 of the Interest Act does not empower the court to award interest upon interest. Therefore, it is possible that if there is any other provision in law empowering the court or the arbitrator to award interest upon interest, Section 3 of the Interest Act will not come into play. Perusal of the provisions of sub-section 7 of Section 31 of the Arbitration Act shows that it does

not contain any prohibition like the one contained in Section 3 of the Interest Act. On the contrary, it empowers the arbitrator to award interest on the entire sum for which the award is made which may include the amount of interest. A comparison of the provisions of Section 34 of the CPC, Section 29 of the Arbitration Act, 1940 and sub-section 7 of Section 31 of the Arbitration Act, 1996, in my opinion, makes the position absolutely clear. Sub-section 7 of Section 31 is quoted above. Section 34 of the CPC and Section 29 of the Arbitration Act, 1940 read as under:-

Section 34 of CPC:

Interest.- (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, (with further interest at such rate not

exceeding six per cent per annum, as the Court deems reasonable on such principal sum) from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

(Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

2. Where such a decree is silent with respect to the payment of further interest (on such principal sum) from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

Section 29 of the Arbitration Act: Interest

on awards.- Where and in so far as award is for the payment of money the Court may in the decree order interest, from the date of the decree at such rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree.

23. Perusal of provisions of Section 34 of the CPC and Section 29 of the 1940 Arbitration Act shows that those provisions empower awarding of interest only on the principal sum and not the entire sum for which the award or decree is made. Sub-section 7 of Section 31, on the other hand uses phraseology to make the position clear that the power of the arbitrator to award interest is not restricted to award interest on the principal only, but the arbitrator has power to award interest on the entire sum for which the award is made. It clearly means that sub-section 7 of Section 31 confers powers on arbitrator to award interest also on that sum which is found to be due by the arbitrator as interest. The judgments considering the provisions of Section 34 of the Civil Procedure Code and the provisions of Section 29 of the Arbitration Act, 1940, in my

opinion, are not relevant in so far as the provisions of Section 31(7) are concerned, because sub-section 7 of Section 31 contains the provision which is drastically different from the provisions of Section 34 of the CPC and Section 29 of the Arbitration Act, 1940. Sub-section 7 of Section 31 confers power on the arbitrator to award interest on interest, and therefore, sub-section 3 of Section 3 of the Interest Act will not operate in the present case. In my opinion, rightly reliance was placed on behalf of the Respondents on the provisions of sub-section 1 of Section 4 of the Interest Act. Sub-section 1 of Section 4 reads as under:-

> **4(1) Notwithstanding anything contained in section 3, interest shall be payable in all cases in which it is payable by virtue of any enactment or other rule of law or usage having the force of law.**

The above quoted provisions of Sub-section 1 of Section 4 of the Interest Act makes it clear that Section 3 does not operate to prevent the Court from awarding interest where the court can do so by virtue of any enactment or other rule of law. Therefore, it

is clear that if there is a rule of law or enactment empowering the court to award interest, then Section 3 of the Interest Act does not oust the jurisdiction of the court. In other words, in case of any conflict between the provisions of Section 3 of the Interest Act and any other enactment, Section 3 yields to any other enactment. Sub-section 7 of Section 31 is definitely contains provision contrary to the provisions of Section 3 of the Interest Act, and therefore, in terms of the provisions of sub-section 1 of Section 4 of the Interest Act, Section 3 will have to yield to sub-section 7 of Section 31 of the Arbitration Act.

24. Thus, I do not find any fault with the learned arbitrator awarding interest on the amount which was found due by the learned arbitrator, which happened to be the amount of interest.

25. Taking overall view of the matter, therefore, in my opinion, the award made by the learned arbitrator, apart from being a well considered award, takes a view which is a possible view of the fact and the law involved and therefore, the award cannot be interfered with in the limited jurisdiction of this

court under Section 34 of the Arbitration Act.

26. Petition thus fails and is dismissed. The Petitioners are directed to pay costs of this petition to the Respondents as incurred by the Respondents.

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